

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**NOEL CANNING, A DIVISION OF THE  
NOEL CORPORATION,**

**Petitioner,**

**v.**

**NATIONAL LABOR RELATIONS  
BOARD,**

**Respondent.**

**15-1029**

Case No. \_\_\_\_\_

**PETITION FOR REVIEW OF DECISION AND ORDER OF  
THE NATIONAL LABOR RELATIONS BOARD**

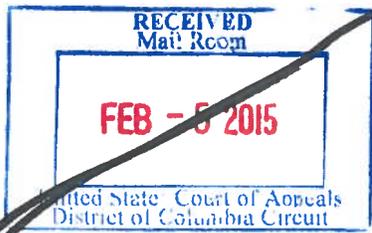
Noel Canning, a Division of the Noel Corporation, hereby petitions the United States Court of Appeals for the District of Columbia Circuit for review of and requests that the court set aside the decision and order entered by the Respondent National Labor Relations Board on December 16, 2014 in case 19-CA-032872 which is reported at 361 NLRB No. 129 and which is attached as Exhibit A.

Dated: February 4, 2015

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Gary E. Lofland'.

Gary E. Lofland #37080  
Counsel for Petitioner  
9 North 11<sup>th</sup> Avenue  
Yakima, WA 98902  
Phone: 509 452-2828



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**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1 and to enable Judges of the Court to evaluate possible disqualifications or recusal, the undersigned counsel for Petitioner Noel Canning states that Noel Canning is a Division of Noel Corporation. Noel Canning has no other parent corporations and no other publicly-held company has a 10% or greater ownership interest in Noel Canning. Noel Canning is engaged in management and distribution of carbonated beverages (Pepsi products) in Central and Eastern Washington.

Date: February 4, 2015

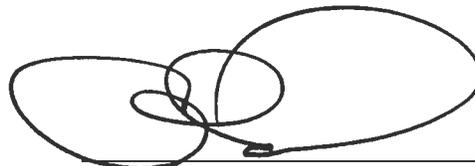
Gary E. Lofland WSBA #37080  
Counsel for Petitioner  
9 North 11<sup>th</sup> Avenue  
Yakima, WA 98902  
Phone: 509 452-2828

**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing Rule 26.1 Corporate Disclosure Statement was placed in the United States mail, postage prepaid, on this date and addressed to:

Deborah Yaffe, Office of Appeals  
Division of Enforcement Litigation  
National Labor Relations Board  
1099 14th Street, N.W.  
Washington, D.C. 20570-0001

Date: February 4, 2015

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a horizontal line.

Gary E. Lofland #37080  
Lofland and Associates  
Counsel for Petitioner  
9 North 11<sup>th</sup> Avenue  
Yakima, WA 98902  
Phone: 509 452-2828

# *Exhibit A*

*NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.*

**Noel Canning, a division of the Noel Corporation and Teamsters Local 760.** Case 19–CA–032872

December 16, 2014

**DECISION AND ORDER**

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND SCHIFFER

On February 8, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB No. 4. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit, and the General Counsel filed a cross-application for enforcement.

On January 25, 2013, the court granted the Respondent's petition and vacated the Board's Order. *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013). At the time of the Board's Order, the Board included three persons whose January 2012 appointments to the Board had been challenged as constitutionally infirm. The court's decision was based on its conclusion that the January 2012 appointments were invalid, and that the Board therefore lacked a quorum to act at the time that it issued its Order. *Id.* at 508.<sup>1</sup> The Board subsequently filed a petition for certiorari. Thereafter, the Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), which held the January 2012 appointments invalid, affirming the court of appeals' judgment on modified grounds.

By letter dated August 15, 2014, the Executive Secretary notified the parties that, in view of the determination that the Board that had previously decided the case was not properly constituted, the Board would now "consider the case anew and . . . issue a decision and order resolving the complaint allegations."<sup>2</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, *supra*, we have considered *de novo* the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated

<sup>1</sup> The court's decision was not based on the merits of the unfair labor practice case; to the contrary, the court found that substantial evidence supported the recess-Board's Decision and Order. 705 F.3d at 494, 496.

<sup>2</sup> On September 5, 2014, the Respondent filed a motion to submit additional written argument. On September 10, 2014, the Executive Secretary denied that motion, but allowed the Respondent an opportunity to submit a "Reliant letter." See *Reliant Energy*, 339 NLRB 66 (2003). The Respondent has not done so.

Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order, to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB No. 4, which is incorporated herein by reference.<sup>3</sup> The judge's recommended Order, as further modified herein, is set forth in full below.

**ORDER**

The Respondent, Noel Canning, a division of the Noel Corporation, Yakima, Washington, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the Union in good faith by refusing to reduce to writing and to execute a collective-bargaining agreement reached with the Union, Teamsters Local 760, embodying the terms agreed to on December 8, 2010, and ratified by the employees on December 15, 2010, including payment of a retroactive bonus, thereby repudiating the parties' agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Execute a collective-bargaining agreement embodying the terms reached with the Union on December 8, 2010, and ratified by the employees on December 15, 2010, for all employees in the following appropriate bargaining unit:

All production employees, including lead production, dock/warehouse employees, including lead dock/warehouse, quality control mixer, maintenance employees, mechanics, construction worker employees, utility employees; excluding all other employees, guards, office clerical employees, owners and supervisors as defined in the Act.

(b) Give retroactive effect, to October 1, 2010, to the provisions of the collective-bargaining agreement reached with the Union on December 8, 2010, and ratified by the employees on December 15, 2010, and apply the terms of that agreement for the agreed-upon 2-year duration, through September 30, 2012.

<sup>3</sup> We shall also modify the judge's recommended Order and substitute a new notice in accordance with our recent decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB No. 10 (2014). We shall further modify the notice in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

NOEL CANNING

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All production employees, including lead production, dock/warehouse employees, including lead dock/warehouse, quality control mixer, maintenance employees, mechanics, construction worker employees, utility employees; excluding all other employees, guards, office clerical employees, owners and supervisors as defined in the Act.

WE WILL give retroactive effect, to October 1, 2010, to the collective-bargaining agreement, and apply the terms of that agreement for the agreed-upon 2-year duration, through September 30, 2012.

WE WILL make our unit employees and the Union pension trust whole, with interest, for any loss of wages or retroactive pension amounts.

WE WILL make our unit employees whole, with interest, for the retroactive bonus.

WE WILL compensate bargaining unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION

The Board's decision can be found at [www.nlr.gov/case/19-CA-032872](http://www.nlr.gov/case/19-CA-032872) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



**CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing Petition for Review of Decision and Order of the National Labor Relations Board was placed in the United States mail, postage prepaid, on this date and addressed to:

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